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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91185498
Party	Plaintiff The TJX Companies, Inc.
Correspondence Address	Brian M. Davis Alston & Bird LLP Bank of America Plaza101 S. Tryon Street, Suite 4000 Charlotte, NC 28280 UNITED STATES brian.davis@alston.com
Submission	Motion to Strike
Filer's Name	Larry C. Jones
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Signature	/Larry C. Jones/
Date	08/28/2009
Attachments	Motion To Strike Affidavit_1.PDF (3 pages)(59090 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE TJX COMPANIES, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91185498
)	
DENISE MARIE BARR,)	
)	
Applicant)	

**OPPOSER'S MOTION TO STRIKE APPLICANT'S
TRIAL TESTIMONY AFFIDAVIT**

Opposer, The TJX Companies, Inc., pursuant, *inter alia*, to TBMP § 532, moves the Board to strike from the record *Applicant's Trial Testimony Affidavit*, filed on or about August 18, 2009.

Although Applicant purported to submit evidence via the referenced affidavit, there was and is no agreement of the parties (as is required under 37 CFR § 2.123(b)) for the submission of either party's testimony by affidavit. Moreover, the putative evidence is not properly submitted under any available alternative method.

Thus, Opposer requests that the Board strike from the record *Applicant's Trial Testimony Affidavit*, including the materials submitted therewith, and reset Opposer's

rebuttal testimony period and the subsequent deadlines for the parties' submissions of trial briefs.¹

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry C. Jones", is written over a horizontal line.

Larry C. Jones
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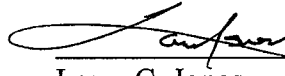
Attorneys for Opposer,
The TJX Companies, Inc.

¹ Although it is not necessary to address Applicant's suggestion that Opposer improperly omitted page 30 of the transcript of Ms. Conduah, that page was an unused continuation of the errata pages and included no testimony, corrections or other substantive information.

CERTIFICATE OF SERVICE

I certify that the foregoing "Opposer's Motion to Strike Applicant's Trial Testimony Affidavit" was served on Applicant by mailing a copy of same by U.S. first class mail, postage prepaid, on the 28th day of August 2009, to Applicant, addressed as follows:

Denise Marie Barr
11540 Velicata Court
Las Vegas, NV 89138



Larry C. Jones